

Assembly Bill No. 371

CHAPTER 14

An act to amend Section 1246 of the Business and Professions Code, and to amend Section 23158 of the Vehicle Code, relating to blood tests, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 11, 2004. Filed
with Secretary of State February 11, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 371, La Suer. Blood tests.

Under existing law, only specified medical and laboratory personnel may withdraw blood for purposes of testing its alcoholic content at the request of a peace officer. These personnel include unlicensed laboratory personnel regulated under specified existing laws that provide for and determine the required qualifications for a category of "certified phlebotomy technicians." In the context of clinical laboratory work, certified phlebotomy technicians generally may not withdraw blood unless supervised by a physically available physician and surgeon, nurse, or clinical laboratory licensee.

This bill would permit a person who has been issued a "certified phlebotomy technician" certificate to withdraw blood in certain locations, following policies and procedures approved by a physician and surgeon and with general supervision, as defined, at the direction and in the presence of a peace officer, for forensic purposes, regardless of whether the person is employed by a clinical laboratory.

This bill would also incorporate additional changes in Section 1246 of the Business and Professions Code proposed by AB 1087, that would become operative only if AB 1087 and this bill are both enacted and become effective on or before January 1, 2005, and this bill is enacted last.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1246 of the Business and Professions Code is amended to read:

1246. (a) Except as provided in subdivisions (b) and (c), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture

for the purpose of withdrawing blood or for clinical laboratory test purposes upon specific authorization from a licensed physician and surgeon, provided that he or she meets both of the following requirements:

(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician and surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

(2) He or she has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that this training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a “certified phlebotomy technician” issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement by April 2006, which is three years from the effective date of the regulations.

(2) The department shall adopt regulations for certification by January 1, 2001, as a “certified phlebotomy technician” that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

- (i) At least 40 hours of didactic instruction.
- (ii) At least 40 hours of practical instruction.
- (iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic instruction as specified in clause (i), if he or she has at least 1,040 hours



of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

(3) Each “certified phlebotomy technician” shall complete at least three hours per year or six hours every two years of continuing education or training. The department shall consider a variety of programs in determining the programs that meet the continuing education or training requirement.

(4) He or she has been found to be competent in phlebotomy by a licensed physician and surgeon or person licensed pursuant to this chapter.

(5) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

(6) The department shall adopt regulations establishing standards for approving training programs designed to prepare applicants for certification pursuant to this section. The standards shall ensure that these programs meet the state’s minimum education and training requirements for comparable programs.

(7) The department shall adopt regulations establishing standards for approving national accreditation agencies to administer certification examinations and tests pursuant to this section.

(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars (\$25).

(c) (1) Notwithstanding any other provision of law, a person who has been issued a “certified phlebotomy technician” certificate pursuant to this section may draw blood following policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000), appropriate to the location where the blood is being drawn and in accordance with state regulations. The blood collection shall be done at the request and in the presence of a peace officer for forensic purposes in a jail, law enforcement facility, or medical facility, with general supervision.

(2) As used in this subdivision, “general supervision” means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The



supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a clinical laboratory authorizing only the performance of skin punctures for test purposes.

SEC. 1.5. Section 1246 of the Business and Professions Code is amended to read:

1246. (a) Except as provided in subdivisions (b) and (c), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test purposes upon specific authorization from a licensed physician and surgeon provided that he or she meets both of the following requirements:

(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician and surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

(2) He or she has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that such training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a “certified phlebotomy technician” issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement by April 2006, which is three years from the effective date of those regulations.



(2) The department shall adopt regulations for certification by January 1, 2001, as a “certified phlebotomy technician” that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved by the department, and shall submit proof of that certification when applying for certification pursuant to this section.

(B) The applicant shall complete education, training, and experience requirements as specified by regulations that shall include, but not be limited to, the following:

- (i) At least 40 hours of didactic instruction.
- (ii) At least 40 hours of practical instruction.
- (iii) At least 50 successful venipunctures.

However, an applicant who has been performing these duties pursuant to subdivision (a) may be exempted from the requirements specified in clauses (ii) and (iii), and from 20 hours of the 40 hours of didactic instruction as specified in clause (i), if he or she has at least 1,040 hours of work experience, as specified in regulations adopted by the department.

It is the intent of the Legislature to permit persons performing these duties pursuant to subdivision (a) to use educational leave provided by their employers for purposes of meeting the requirements of this section.

(3) Each “certified phlebotomy technician” shall complete at least three hours per year or six hours every two years of continuing education or training. The department shall consider a variety of programs in determining the programs that meet the continuing education or training requirement.

(4) He or she has been found to be competent in phlebotomy by a licensed physician and surgeon or person licensed pursuant to this chapter.

(5) He or she works under the supervision of a licensed physician and surgeon, licensed registered nurse, or person licensed under this chapter, or the designee of a licensed physician and surgeon or the designee of a person licensed under this chapter.

(6) The department shall adopt regulations establishing standards for approving training programs designed to prepare applicants for certification pursuant to this section. The standards shall ensure that these programs meet the state’s minimum education and training requirements for comparable programs.

(7) The department shall adopt regulations establishing standards for approving national accreditation agencies to administer certification examinations and tests pursuant to this section.



(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars (\$25).

(c) (1) (A) A “certified phlebotomy technician” may perform venipuncture or skin puncture to obtain a specimen for nondiagnostic tests assessing the health of an individual, for insurance purposes provided that the technician works under the general supervision of a physician and surgeon licensed under Chapter 5 (commencing with Section 2000). The physician and surgeon may delegate the general supervision duties to a registered nurse or a person licensed under this chapter, but shall remain responsible for ensuring that all those duties and responsibilities are properly performed. The physician and surgeon shall make available to the department, upon request, records maintained documenting when a certified phlebotomy technician has performed venipuncture or skin puncture pursuant to this paragraph.

(B) As used in this paragraph, general supervision requires the supervisor of the technician to determine that the technician is competent to perform venipuncture or skin puncture prior to the technician’s first blood withdrawal, and on an annual basis thereafter. The supervisor is also required to determine, on a monthly basis, that the technician complies with appropriate venipuncture or skin puncture policies and procedures approved by the medical director and required by state regulations. The supervisor, or another designated licensed physician and surgeon, registered nurse, or person licensed under this chapter, shall be available for consultation with the technician, either in person or through telephonic or electronic means, at the time of blood withdrawal.

(2) (A) Notwithstanding any other provision of law, a person who has been issued a “certified phlebotomy technician” certificate pursuant to this section may draw blood following policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000), appropriate to the location where the blood is being drawn and in accordance with state regulations. The blood collection shall be done at the request and in the presence of a peace officer for forensic purposes in a jail, law enforcement facility, or medical facility, with general supervision.

(B) As used in this paragraph, “general supervision” means that the supervisor of the technician is licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure compliance with venipuncture policies,



procedures, and regulations. The supervisor, or another person licensed under this code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a clinical laboratory authorizing only the performance of skin punctures for test purposes.

SEC. 2. Section 23158 of the Vehicle Code is amended to read:

23158. (a) Notwithstanding any other provision of law, only a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, a person who has been issued a “certified phlebotomy technician” certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of breath specimens. An emergency call for paramedic services takes precedence over a peace officer’s request for a paramedic to withdraw blood for determining its alcoholic content. A certified paramedic shall not withdraw blood for this purpose unless authorized by his or her employer to do so.

(b) The person tested may, at his or her own expense, have a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a “certified phlebotomy technician” certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or any other person of his or her own choosing administer a test in addition to any test administered at the direction of a peace officer for the purpose of determining the amount of alcohol in the person’s blood at the time alleged as shown by chemical analysis of his or her blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(c) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer shall be made available to the person or the person’s attorney.

(d) Notwithstanding any other provision of law, no licensed physician and surgeon, registered nurse, licensed vocational nurse, duly



licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a “certified phlebotomy technician” certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory scientist or clinical laboratory bioanalyst, person who has been issued a “certified phlebotomy technician” certificate pursuant to Section 1246 of the Business and Professions Code, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, owning or leasing the premises on which tests are performed, shall incur any civil or criminal liability as a result of the administering of a blood test in a reasonable manner in a hospital, clinical laboratory, medical clinic environment, jail, or law enforcement facility, according to accepted venipuncture practices, without violence by the person administering the test, and when requested in writing by a peace officer to administer the test.

(e) Notwithstanding any other provision of law, a person who has been issued a “certified phlebotomy technician” certificate pursuant to Section 1246 of the Business and Professions Code and who is authorized by this section to draw blood at the request and in the presence of a peace officer for purposes of determining its alcoholic content, may do so in a jail, law enforcement facility, or medical facility, with general supervision. The “certified phlebotomy technician” shall draw blood following the policies and procedures approved by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, appropriate to the location where the blood is being drawn and in accordance with state regulations.

(f) The Certified Phlebotomy Technician I or II shall carry a current, valid identification card issued by the State Department of Health Services, attesting to the technician’s name, certificate type, and effective dates of certification, when performing blood withdrawals.

(g) As used in this section, “general supervision” means that the supervisor of the technician is licensed under the Business and Professions Code as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, and reviews the competency of the technician before the technician may perform blood withdrawals without direct supervision, and on an annual basis thereafter. The supervisor is also required to review the work of the technician at least once a month to ensure



compliance with venipuncture policies, procedures, and regulations. The supervisor, or another person licensed as a physician and surgeon, physician assistant, clinical laboratory bioanalyst, registered nurse, or clinical laboratory scientist, shall be accessible to the location where the technician is working to provide onsite, telephone, or electronic consultation, within 30 minutes when needed.

(h) Nothing in this section shall be construed as requiring the certified phlebotomy technician who is authorized to withdraw blood by this section at the request and in the presence of a peace officer for purposes of determining alcoholic content to be associated with a clinical laboratory or to be directly supervised after competency has been established.

(i) If the test given under Section 23612 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(j) The department, in cooperation with the State Department of Health Services or any other appropriate agency, shall adopt uniform standards for the withdrawal, handling, and preservation of blood samples prior to analysis.

(k) As used in this section, “certified paramedic” does not include any employee of a fire department.

(l) Consent, waiver of liability, or the offering to, acceptance by, or refusal of consent or waiver of liability by the person on whom a test is administered, is not an issue or relevant to the immunity from liability for medical or law enforcement personnel or other facilities designated under subdivision (d).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1246 of the Business and Professions Code proposed by both this bill and AB 1087. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 1246 of the Business and Professions Code, and (3) this bill is enacted after AB 1087, in which case Section 1 of this bill shall not become operative.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to take effect as soon as possible, it is necessary that this act take effect immediately.

